

HOUSE BILL REPORT

SB 5153

As Passed House - Amended:

April 6, 2009

Title: An act relating to creating the uniform foreign-country money judgments recognition act.

Brief Description: Creating the uniform foreign-country money judgments recognition act.

Sponsors: Senators Kline, Rockefeller and Shin; by request of Uniform Legislation Commission.

Brief History:

Committee Activity:

Judiciary: 3/11/09, 3/16/09 [DPA].

Floor Activity

Passed House - Amended: 4/6/09, 94-2.

Brief Summary of Bill (As Amended by House)

- Adopts the Uniform Foreign-Country Money Judgments Recognition Act, which establishes procedures for state courts to recognize judgments obtained in foreign countries for the purposes of enforcement.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts and Warnick.

Staff: Trudes Tango (786-7384)

Background:

In 2005 the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved and recommended for enactment the Uniform Foreign-Country Money Judgments Recognition Act ("new Act"). The new Act is intended to update the Uniform Foreign Money-Judgment Recognition Act (UFMJRA), which NCCUSL created in 1962 and which

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Washington adopted in the 1970s. The UFMJRA provides procedures for courts to recognize judgments rendered in foreign countries. The recognition of judgments rendered in other states within the United States is governed by a separate uniform act and under the full faith and credit clause of the U.S. Constitution.

The UFMJRA applies to judgments from any governmental unit other than the United States. The judgment must be final, conclusive, and enforceable where rendered. The foreign judgment must be a judgment of a foreign country granting or denying the recovery of a sum of money. The UFMJRA does not apply to foreign judgments for taxes, for fines or penalties, or for support in family matters.

A foreign judgment is not conclusive, and therefore cannot be recognized by a court in this state if:

- the judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process; or
- the foreign court did not have personal jurisdiction over the defendant or subject matter jurisdiction.

A court in this state has discretion whether to recognize a foreign judgment if:

- the defendant in the foreign court did not receive notice of the proceedings in sufficient time to enable him or her to defend;
- the judgment was obtained by fraud;
- the claim for relief on which the judgment is based is repugnant to the public policy of this state;
- the judgment conflicts with another final and conclusive judgment;
- the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled other than by proceedings in the foreign court; or
- in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the action.

The UFMJRA does not have provisions expressly addressing issues such as who has the burden of proof regarding the grounds for denying recognition of a judgment and when or how an action for recognition must be brought.

Summary of Amended Bill:

The UFMJRA is repealed and replaced with the Uniform Foreign-Country Money Judgments Recognition Act ("new Act"). The new Act is very similar to the UFMJRA but makes some specific changes. The new Act clarifies in its definitions of "foreign country" and "foreign-country judgment" that the new Act does not apply to judgments in which the full faith and credit clause is implemented (judgments rendered in other states of the United States).

In addition, the new Act explicitly provides that the party seeking recognition of a foreign-country judgment has the burden of establishing that the new Act applies and the party resisting recognition has the burden of establishing that a ground for nonrecognition exists.

The grounds for recognition under the new Act are substantially the same as the grounds listed under the UFMJRA. The grounds for not recognizing a judgment are also substantially the same, except for a few changes. First, the grounds to deny recognition based on fraud is changed to clarify that the fraud must have deprived the losing party of an adequate opportunity to present its case. Second, the grounds to deny recognition based on public policy is expanded to allow denial of recognition if the judgment or cause of action on which the judgment is based is repugnant to the public policy of the state or of the United States. Third, the new Act adds two new grounds under which a court has discretion to not recognize a foreign-country judgment:

- the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or
- the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

The new Act also establishes the ways in which the issue of recognition may be raised. Recognition of the foreign-country judgment may be sought as an original matter, or the issue of recognition may be raised in a pending action as a counterclaim, cross-claim, or affirmative defense.

The new Act also establishes a statute of limitations for recognizing a foreign-country judgment. An action for recognition must be commenced within the time that the judgment is effective in the foreign country where the judgment was rendered or within 15 years from the date the judgment became effective in that country, whichever period is shorter.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill simply updates the current act on foreign judgments. The bill changes the name of the act because there was confusion with the Uniform Enforcement of Foreign Judgments Act, which applies to judgments from sister states and territories of the United States. The Act also allocates the burden of proof to the parties and clarifies when an action to recognize a foreign judgment can be brought. Whether or not to recognize a judgment based on public policy is left to the discretion of the state court to determine whether the judgment or cause of action is repugnant to the laws of the state. If it is so at odds with the state's policy, then the state court has discretion not to enforce the judgment. If the judgment meets the fundamentals of due process, it should be recognized in this state, just as this state would want other countries to recognize judgments from this state's courts.

(Opposed) None.

Persons Testifying: Marlin Appelwick, Washington Uniform Legislation Commission.

Persons Signed In To Testify But Not Testifying: None.